

February 7, 2018

By ECF

Honorable Kimba M. Wood
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Rigas v. United States*, No. 11 Civ. 6964 & 02 Cr. 1236

Dear Judge Wood:

Petitioners John and Timothy Rigas seek the Court's leave to file an Amended Rule 56.1 Statement and an Amended Motion for Judgment on their claims under *Brady v. Maryland*, 373 U.S. 83 (1963).

Previously, the Court ordered—and the parties completed—briefing on a motion for judgment on the Petitioners' *Brady* claims. *See* Dkt. Nos. 123-130, 134-137, 142-144, 148. The Court denied Petitioners' motion due to a lack of compliance with Local Rule 56.1 and the Court's Individual Practices. Dkt. No. 150.

Lawrence Marshall, who was responsible for the various filings¹ regarding the motion for judgment on the *Brady* claims, deeply regrets that the previously

¹ The filings were (1) Petitioners' Motion for Judgment on Various Claims Alleging Violations of *Brady v. Maryland*, 373 U.S. 83 (1963) (ECF 123); (2) Petitioners' Motion for Leave to File Their First Amended Motions Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Their Sentences (ECF 124); (3) Petitioners' Statement Pursuant to Local Rule 56.1 in Support of Motion for Judgment on Various Claims Alleging Violations of *Brady v. Maryland*, 373 U.S. 83 (1963) (RCF 125); (4) Synopsis of Memorandum of Law in Support of Petitioners' Motion for Judgment on Various Claims Alleging Violations of *Brady v. Maryland*, 373 U.S. 83 (1963) (ECF 126); (5) Memorandum of Law in Support of Petitioners' Motion for Judgment on Various

filed Rule 56.1 Statement was deficient and not compliant with the Court's rules and individual practices. Mr. Marshall apologizes to the Court for this and respectfully asks that his mistake not be held against his clients.

Following the Court's dismissal of their motion, Petitioners retained MoloLamken LLP to work as co-counsel with Mr. Marshall in this litigation. Together, counsel for Petitioners corrected the deficiencies in the Local Rule 56.1 Statement and memorandum of law in support of judgment, bringing them into conformity with the Court's rules and individual practices.

Petitioners now request the Court's permission to file the corrected Local Rule 56.1 Statement and memorandum of law so that their constitutional claims, which are now fully briefed, may be heard and considered on the merits. Counsel for Petitioners have consulted with AUSA Brian Blais, and he indicated that the government takes no position with respect to Petitioners' request. In the event the Court has concerns regarding this motion, counsel will be appearing before the Court on February 20, 2018, and will be in a position to address those concerns.

Counsel for Petitioners note that there are few substantive alterations to the memorandum of law. Rather, the changes in the memorandum relate primarily to accurate citations of a now compliant Rule 56.1 Statement. Counsel will provide a redline version of the memorandum to the Court and to the government to facilitate review of the substantive changes.

Claims Alleging Violations of *Brady v. Maryland*, 373 U.S. 83 (1963) (ECF 127); (6) John Rigas's and Timothy J. Rigas's First Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Their Sentences (ECF 128); (7) Appendix of 102 Documents to Accompany Memorandum of Law in Support of Petitioners' Motion for Judgment on Various Claims Alleging Violations of *Brady v. Maryland*, 373 U.S. 83 (1963)(ECF 129); and (8) 20 Volume of Authorities Cited in Memorandum of Law in Support of Petitioners' Motion for Judgment on Various Claims Alleging Violations of *Brady v. Maryland*, 373 U.S. 83 (1963) (ECF 130).

Attached to this letter are (1) the Amended Rule 56.1 Statement, (2) the Amended Memorandum of Law in Support of Judgment and redline, and (3) the February 7, 2018 Declaration of Steven F. Molo and the Appendix Exhibits attached thereto.² Counsel will deliver a courtesy copy of the documents to the Court as soon as possible.

Respectfully submitted,
Attorneys for Petitioners
John J. Rigas and Timothy J. Rigas

LAWRENCE C. MARSHALL, ESQ.
ADMITTED *PRO HAC VICE*
559 NATHAN ABBOTT WAY
STANFORD, CALIFORNIA 94305
(650) 723-7572
lmarshall@stanford.edu

s/ Steven F. Molo
STEVEN F. MOLO
MOLOLAMKEN LLP
430 PARK AVENUE
NEW YORK, NEW YORK 10022
(212) 607-8160
smolo@mololamken.com

MEGAN CUNNIFF CHURCH
JORDAN RICE
ADMITTED *PRO HAC VICE*
MOLOLAMKEN LLP
300 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60654
(312) 450-6700
mchurch@mololamken.com
jrice@mololamken.com

cc: AUSA Brian Blais
AUSA Damian Williams

² To limit the size of the appendix, Counsel cited to the trial transcript previously submitted by the government in its Amended Rule 56.1 Statement. Counsel will provide the Court with a new copy of the trial transcript upon request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of February, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties with an e-mail address of record who have appeared and consent to electronic service in this action.

Dated: February 7, 2018

s/ Steven F. Molo
STEVEN F. MOLO
MOLOLAMKEN LLP
430 PARK AVENUE
NEW YORK, NY 10022
(212) 607-8160
smolo@mololamken.com

Attorney for Petitioners